IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.98 OF 2004

Farida Sayeed Asgar
Aged about 35 years, Occ: Service
Adult Muslim, Indian Inhabitant
Residing at Chawl No.A/6, Room No.4
Park Site Colony, Opp.Madina Masjid
Park Site, Vikhroli, Bombay 400 079. ...Applicant

Vs.

1.Sayeed Asgar Murtuja S/o.Murtjuja Ahmed
Aged about 45 years, Occ: Service in
B.E.S.T. Adult Muslim, Indian Inhabitant,
Residing at Room No.58, Saraswati
Society, Upper Depot Pada, Behind
Building No.2, Park Site, Vikhroli,
Bombay-400 079.

2.The State of Maharashtra ...Respondents

Ms.Vidya N. Manjarekar i/b. Mr. P.M.Havnur for Applicant
None for Respondent

CORAM: R.M.S. KHANDEPARKAR &
SMT. ROSHAN DALVI, JJ.
DATED: 14TH MARCH, 2006

ORAL JUDGMENT (PER R.M.S. KHANDEPARKAR, J.)

1. Heard Advocate for the applicant. None present for the respondent though served.

2. The Applicant challenges the order dated 2nd December 2003 passed by the Family Court, Mumbai, on a limited ground that the Family Court while enhancing the maintenance amount from Rs.300/- p.m. to Rs.500/- p.m. ought to have directed the Respondent to pay the

enhanced arrears from the date of the application and not from the date of the order.

3. Perusal of the record discloses that initially, the parties, by consent, had agreed that the Respondent shall pay maintenance of Rs.300/- p.m. to their son Ibrahim from the date of filing of the interim application dated 6th March, 1996. Settlement in that regard was arrived at on 10th April, 1996. Thereafter the Petitioner on 25th November 1996 filed an application disclosing that the maintenance amount of Rs.300/- was not sufficient to meet the necessary expenses of their son and further that the Respondent is also not in a position to pay higher amount than what was being paid. Though repeated opportunity was given to the Respondent to file his say in the matter

he did not file any say before the Family Court. The matter therefore, proceeded without any say of the Respondent on the application of the Petitioner for enhancement of the maintenance amount. The Family Court thereafter, after hearing the parties, by the impugned order enhanced the maintenance allowance to Rs.500/- p.m. However, it granted the same with effect from the date of the order i.e. 2nd December 2003, instead of date of the application i.e. 25th

November 1996.

4. Perusal of the application dated 25th November 1996 discloses that the Petitioner had categorically stated that considering the educational expenditure for their son Ibrahim as also other expenditure necessary for his upbringing have increased, the meagre amount of Rs.300/- was not sufficient and therefore, the maintenance allowance should be increased to Rs.500/- p.m. It is a matter of record that the facts stated in the application were neither denied nor disputed. Taking into consideration the said fact, the Family Court allowed the application and granted the maintenance of Rs.500/-p.m. However, while restricting such enhancement to be effective from the date of order of the Family Court, no reasons have been disclosed for such restrictions. In the normal circumstances, the maintenance allowance is to be granted or enhanced from the date of the application, unless there are sufficient reasons for granting the same with effect from any other day. The impugned order does not disclose any justification for enhancement of the amount only from the date of the order, and therefore the direction in that regard by the Family Court cannot be sustained. Rather the records disclose that it was not disputed by the

Respondent that on account of increase in expenses for their son Ibrahim, there was need for enhancement in the maintenance amount. It was but obvious that enhancement ought to have been granted from the said date of application. Perusal of the impugned order discloses improper exercise of the jurisdiction by the Family Court in restricting the enhancement to be effective from the date of the order.

5. In the result, therefore, the petition succeeds and the impugned order to the extent it directs the enhancement of compensation from the date of the order is hereby set aside and the same is modified by granting the enhancement in monthly allowance to the tune of Rs.500/- to be effective from the date of the application i.e. 25th November 1996.

6. Since the application which was filed before the Family Court, itself discloses that the Respondent had defaulted in paying the maintenance charges and had been irregular in payment thereof, and it is complained across the bar that such defaults still continue, all the arrears are directed to be recovered from the salary of the Respondent and in that regard the Employer of the Respondent namely BEST ought to be directed for carrying out necessary deductions from

his salary for direct payment thereof to the Petitioner. Family Court shall accordingly do the needful within a period of one month from the date of the receipt of the writ of this Court.

7. The rule is made absolute in above terms with no order as to costs.

(R.M.S.KHANDEPARKAR, J.)

(SMT.ROSHAN DALVI,J.)